

§ 404.1284

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signed by the appropriate State official and the Commissioner. (See § 404.3(c) for the applicable rule where periods of limitation expire on nonwork days.) A claim for credit or refund filed by the State before the extended time limit ends shall be considered to have been filed within the time period limitation specified in section 218(r)(1) of the Act as it read prior to the enactment of Pub. L. 99-509. (See § 404.1282.)

(2) *Reextension.* An extension agreement provided for in paragraph (a)(1) of this section may be reextended by written agreement between the State and the Commissioner for no more than 6 months at a time beyond the expiration of the prior extension or reextension agreement, and only if one of the following conditions is met:

(i) Litigation (including intrastate litigation) or a review under §§ 404.1290 or 404.1297 involving wage reports or corrections on the same issue is pending; or

(ii) The State is actively pursuing corrections of a known error which require additional time to complete; or

(iii) The Social Security Administration is developing a coverage or wage issue which was being considered before the statute of limitations expired and additional time is needed to make a determination; or

(iv) The Social Security Administration has not issued to the State a final audit statement on the State's wage or correction reports; or

(v) There is pending Federal legislation which may substantially affect the issue in question, or the issue has national implications.

(b) *Deletion of wage entry on employee's earnings record.* If the Commissioner, under section 205(c)(5) (A), (B), or (E) of the Act, deletes a wage entry on an individual's earnings record, a claim for credit or refund of the overpayment resulting from the deletion is considered filed within the applicable time limitations in § 404.1282 if

(1) The State files the claim before the Commissioner's decision regarding the deletion of the wage entry from the individual's earnings record becomes final or

(2) The State files a claim regarding the deletion of the wage entry from the

individual's earnings record which entry is erroneous because of fraud.

[53 FR 32976, Aug. 29, 1988, as amended at 62 FR 38451, July 18, 1997]

§ 404.1284 Offsetting underpayments against overpayments—for wages paid prior to 1987.

(a) *State fails to make adjustment for allowance of credit.* If SSA notifies a State that a credit is due the State, and the State does not make the adjustment for the allowance of the credit, SSA offsets the credit against any contributions or interest due. Before making the offset, SSA will give the State an opportunity to make the adjustment.

(b) *State fails to make adjustment for underpayment of contributions or interest due.* If SSA notifies a State that contributions or interest are due, and the State does not pay the contributions or interest, SSA offsets the contributions or interest due against any credit due the State. Before making the offset, SSA will give the State an opportunity to pay the underpayment or interest due.

HOW ASSESSMENTS FOR UNDERPAYMENTS OF CONTRIBUTIONS ARE MADE—FOR WAGES PAID PRIOR TO 1987

§ 404.1285 Assessments of amounts due—for wages paid prior to 1987.

(a) A State is liable for any amount due (which includes contributions or interest) under an agreement until the Commissioner is satisfied that the amount has been paid to the Secretary of the Treasury. If the Commissioner is not satisfied that a State has paid the amount due, the Commissioner issues an assessment for the amount due subject to the time limitations in § 404.1286 and the exceptions to the time limitations in §§ 404.1287 and 404.1289. If detailed wage information is not available, the assessment is issued based on the following:

(1) The largest number of individuals whose services are known to be covered under the agreement is used for computation purposes;

(2) The individuals are assumed to have maximum creditable earnings each year;

(3) The earnings are considered wages for covered services; and

(4) The amount computed is increased by twenty percent to insure that all covered wages are included in the assessment.

(b) If the State pays the amount assessed and the assessed amount is later determined to be more than the amount actually due, we issue a refund or credit to that State for the excess amount. When the assessment is issued within the applicable time limitation, there is no time limit on collecting the amount due. An assessment is issued on the date that it is mailed or otherwise delivered to the State.

[53 FR 32976, Aug. 29, 1988, as amended at 62 FR 38451, July 18, 1997]

§ 404.1286 Time limitations on assessments—for wages paid prior to 1987.

(a) Subject to the exceptions to the time limitations in §§ 404.1287 and 404.1289, a State is not liable for an amount due under an agreement unless the Commissioner makes an assessment for that amount before the later of the following periods ends:

(1) Three years, 3 months, and 15 days after the year in which the wages, upon which the amount is due, were paid; or

(2) Three years after the date the amount became due.

(b) Where the time limitation ends on a weekend, legal holiday or Federal nonworkday, an assessment is considered timely if the Commissioner makes the assessment on the next Federal workday.

[53 FR 32976, Aug. 29, 1988, as amended at 62 FR 38451, July 18, 1997]

§ 404.1287 Exceptions to the time limitations on assessments—for wages paid prior to 1987.

(a)(1) *Extension by agreement.* The applicable time period described in § 404.1286 for assessment of an amount due may, before the expiration of such period, be extended for no more than 6 months by written agreement between the State and the Commissioner. The agreement must involve and identify a known issue or reporting error. It must also identify the periods involved, the time limitation which is being extended and the date to which it is being

extended, and the coverage group(s) and position(s) or individual(s) to which the agreement applies. The extension of the period of limitation shall not become effective until the agreement is signed by the appropriate State official and the Commissioner. (See § 404.3(c) for the applicable rule where periods of limitation expire on nonwork days.) An assessment made by the Commissioner before the extended time limit ends shall be considered to have been made within the time period limitation specified in section 218(q)(2) of the Act as it read prior to the enactment of Pub. L. 99-509. (See § 404.1286.)

(2) *Reextension.* An extension agreement provided for in paragraph (a)(1) of this section may be reextended by written agreement between the State and the Commissioner for no more than 6 months at a time beyond the expiration of the prior extension or reextension agreement, and only if one of the following conditions is met:

(i) Litigation (including intrastate litigation) or a review under § 404.1290 or § 404.1297 involving wage reports or corrections on the same issue is pending; or

(ii) The State is actively pursuing corrections of a known error which require additional time to complete; or

(iii) The Social Security Administration is developing a coverage or wage issue which was being considered before the statute of limitations expired and additional time is needed to make a determination; or

(iv) The Social Security Administration has not issued to the State a final audit statement on the State's wage or correction reports; or

(v) There is pending Federal legislation which may substantially affect the issue in question, or the issue has national implications.

(b) *The 365-day period.* If a State files a report before the applicable time limitation in § 404.1286 (or any extension under paragraph (a) of this section) ends and makes no payment or pays less than the correct amount due, the Commissioner may assess the State for the amount due after the applicable time limitation has ended. However, the Commissioner must make the assessment no later than the 365th day after the day the State makes payment